



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/950,826 10/15/97 UEMURA

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EXAMINER

FORD, J

ART UNIT

PAPER NUMBER

3743

11

DATE MAILED 08/28/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

see attached

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The reply filed on June 12, 2000 is not fully responsive to the prior Office action because of the following omission(s) or matter(s): the argument that Figure 11C and Figure 11D do not constitute prior art is not supported by the objective evidence, nor attested to by the named *applicants* in JP 8-152721 and SN 08/950,826. Moreover, the partial translation of JP 8-152,721 provided to the Examiner on June 12, 2000 refers to Figures 8(a) -8(d) as illustrative of the “problems of a *conventional* air conditioning unit” (page 5 of translation, last paragraph, emphasis supplied), in much the same manner that the specification of SN 08/950,826 describes Figures 11A-11D. Thus, the prior art designation appears to be proper, absent some other showing that it is not. MPEP 2129 states that drawing figures legended “prior art” are an admission that what is pictured is prior art relative to what is claimed, In re Noyima, 184 USPQ 607, 610 (CCPA 1975). Moreover, applicants have at least twice executed declarations (i.e. in SN 08/950,826 and SN 08/872,647) indicating that they have reviewed and understood the contents of the specification. In view of such review, it is unclear to the Examiner how the purportedly erroneous designation of these Figures as prior art twice escaped detection. Finally, applicants themselves have not gone on the record (in the form of a formal affidavit or declaration) explaining why these Figures are not prior art, relying instead on (overseas) counsel’s allegations. Counsel’s arguments are not evidence. See MPEP 716.01(c) and MPEP 2145.

The Examiner sees no discussion whatsoever in applicants’ response of evaporator outlet sensor 80 in JP-A-7-47831 (assigned to Denso) and where it was located. While the reference itself is silent on the matter, that application was filed in 1993 and published in 1995. Was the

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system disclosed in JP-A-7-47831 (or some variant of it), ever sold or used publicly such that it would constitute prior art? If so, precisely where was the evaporator outlet temperature sensor 80 located? It had to have been in one of the two ducts located above and below partition plate

32. Which duct was the evaporator temperature sensor located in?

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given a TIME PERIOD of **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

The Examiner wishes to acknowledge a telephone inquiry made by Mr. Schmidt prior to submission of the June 12, 2000 amendment, in which the Examiner indicated that he would be receptive to evidence that Figures 11A-11D were erroneously designated "Prior Art". The Examiner did not realize, at the time, that such evidence would be derived from one of the priority documents and would be of such character as to lend itself an interpretation as an admission of prior art. As is now self-evident, orderly examination can not occur until the aforementioned prior art issues are resolved.

Any inquiry concerning this communication should be directed to John Ford at telephone number (703) 308-2636.


John K. Ford
Primary Examiner